

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DANIEL RUBIN,

Petitioner,

-v-

9:02-CV-0639

HENRY GARVIN,

Respondent.

APPEARANCES:

CULP LAW OFFICE
Robert A. Culp, Esq., of Counsel
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Attorneys for Petitioner

HON. ELIOT SPITZER
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New York, New York 10271
Attorneys for Respondent

Hon. Norman A. Mordue, D.J.:

MEMORANDUM-DECISION AND ORDER

Petitioner, formerly an inmate of New York Department of Correctional Services, brought this proceeding for habeas corpus under 28 U.S.C. § 2254, stemming from convictions in 1999 of second degree larceny and eight counts of filing a false instrument in the first degree. Petitioner's application was referred to United States Magistrate Judge David E. Peebles for a Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.4. Magistrate

Judge Peebles has prepared a comprehensive Report and Recommendation (Dkt. No. 28) recommending that the petition be granted as to petitioner's convictions on counts two and three of the indictment, and denied as to his convictions on counts one, four, five, six, seven, eight and nine. Objections have been submitted by both petitioner (Dkt. No. 32) and respondent (Dkt. No. 31).

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of those parts of a magistrate judge's report-recommendation to which a party specifically objects. Where only general objections are filed, the Court reviews for clear error. *See Brown v. Peters*, 1997 WL 599355,*2-*3 (N.D.N.Y.), *aff'd without op.*, 175 F.3d 1007 (2d Cir. 1999). Failure to object to any portion of a report-recommendation waives further judicial review of the matters therein. *See Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993).

The Court has reviewed the Report and Recommendation, the record, and the parties' objections. Upon *de novo* review, the Court agrees with the Report and Recommendation in all respects. In particular, with respect to respondent's objection (Dkt. No. 31), the Court finds that Magistrate Judge Peebles properly applied the "actual innocence" standard in recommending that the petition be granted as to counts two and three. Likewise, the Court has reviewed *de novo* the various matters raised in petitioner's objections (Dkt. No. 32), and concludes that Magistrate Judge Peebles properly analyzed the issues.

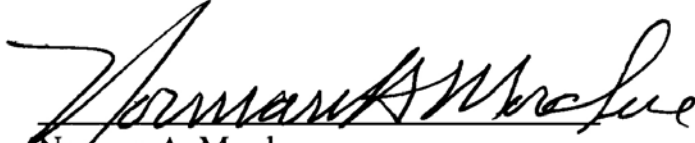
It is therefore

ORDERED that the Report and Recommendation (Dkt. No. 28) of United States Magistrate Judge David E. Peebles is accepted and adopted in its entirety; and it is further

ORDERED that the petition is granted as to petitioner's convictions on counts two and

three of the indictment, and denied as to his convictions on counts one, four, five, six, seven, eight and nine.

IT IS SO ORDERED.
March 3, 2006
Syracuse, New York



Norman A. Mordue
U.S. District Judge

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